

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

ELECTRONIC SPECIALTY COMPANY
(Employer-Appellant)

PRECEDENT
RULING DECISION
No. P-R-15
Case No. R-68-18

Employer Account No.

Claimant: Alan Jenkins
S.S.A. No.:
BYB: 01227 S.D.: 06226

The employer appealed from Referee's Decision No. BK-R-5640 which held that the employer's account is not relieved of charges under section 1032 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant worked for the employer herein as an assembler from April 26, 1966 to June 22, 1966. At time of termination he was receiving a wage of \$2.15 per hour. During the course of an exit interview the employer was informed the claimant was leaving to accept work with a construction company for more money.

Effective January 22, 1967 the claimant registered for work and filed a claim for unemployment compensation benefits. The employer, as a base period employer, received a Notice of Claim Filed and Computation of Benefit Amounts (DE 1545). In response thereto the employer furnished information that the claimant quit June 22, 1966 to accept a job doing construction work. The claimant was not then in an active claim status. The department wrote to the claimant in an effort to obtain more

information regarding the leaving of work and the subsequent employment. When no response was received, the department issued an unfavorable ruling to the employer, holding that the employer had not furnished information establishing that the claimant's quit was without good cause. The employer's appeal from the ruling was timely.

Subsequently, the employer requested information from the Department of Employment concerning the names of employers who had reported wages paid to the claimant in the second and third quarters of 1966. On receipt of such information the employer made further investigation and determined that between June 22, 1966 and July 11, 1966 the claimant was employed by a company which supplied temporary workers. Specific dates of such employment were not established other than that they were in the above mentioned period. The wage with this subsequent employer was about \$1.50 per hour.

Thereafter the claimant worked for a public utility from July 11, 1966 to December 7, 1966, with a wage at termination of approximately \$2.35 per hour.

Neither the Department of Employment nor the employer had any other information regarding the employment of the claimant subsequent to June 22, 1966.

REASONS FOR DECISION

Section 1032 of the California Unemployment Insurance Code provides that an employer's account shall be relieved of benefit charges if it is ruled under section 1030 of the code that the claimant left his employment voluntarily and without good cause.

The questions of what constitutes good cause, how it can be proved or disproved, and who has the burden of proof were considered at length in Attorney General's Opinion No. 52/99 of July 9, 1952.

The opinion related to the then existing section 39.1 of the Unemployment Insurance Act, but it is

equally valid today because that earlier section has been incorporated substantially into sections 1030 and 1032 of the Unemployment Insurance Code, now under consideration.

The conclusions of the Attorney General may be summarized as follows:

1. Good cause, or lack of it, is difficult of definition and depends on factual circumstances.
2. The employer has the burden of proof to show lack of good cause, but
3. The burden of going forward with the proof may shift to the department if the employer establishes a prima facie case.

Pertinent language of the opinion is as follows:

"An employer in order not to have his account charged . . . must submit the facts and request a ruling The Department of Employment then considers the facts presented by the employer, together with any other information in its possession and makes its determination. If the Department of Employment makes a determination in favor of the employer, that is the end of the matter. But if the Department of Employment makes a determination adverse to the employer, the matter may be appealed to a referee and then to the Appeals Board.

"The question of voluntary leaving without good cause or being discharged for misconduct must first be determined administratively by the Department of Employment. It is impossible to say what facts presented by an employer would be insufficient or so lacking in detail as to justify the Department of Employment in making a determination adverse to the employer. Likewise, it is impossible to say what other information in

the possession of the Department of Employment would be sufficient to justify it in considering that the facts presented by the employer were refuted and making a determination adverse to the employer. Generally speaking, if the facts presented by the employer reasonably show that the claimant voluntarily left his employment without good cause or was discharged therefrom for misconduct and the Department of Employment has no other information in its possession or the information it has does not reasonably refute the facts presented by the employer, the determination should be in favor of the employer.

"If the determination by the Department of Employment is adverse to the employer and the issue is presented to a referee or the Appeals Board, the burden of proof, i.e., the burden of producing convincing evidence to establish the affirmative of the issue, rests upon the employer and if he produces no evidence or the evidence he produces does not carry conviction, then his account must be charged. But if the employer produces evidence which establishes a prima facie case, then the burden of going forward with the evidence shifts to the Department of Employment and if it produces no evidence or the evidence it produces is so weak as not to refute the prima facie case of the employer, then the determination should be in favor of the employer.

"It is impossible to say what quantum of evidence would establish a prima facie case; that can only be determined with reference to the particular facts and circumstances of each case. . . ."

We have been guided by the above opinion in many cases over the years since its issuance.

We reaffirm our faith in the soundness of the opinion and readopt its several principles.

Therefore, under the Unemployment Insurance Code and quoted opinion, an employer has not sustained its burden of proof and his account will not be relieved of benefit charges where the facts submitted by the employer and the facts in the possession of the department do not establish that the claimant voluntarily left his work without good cause, or was discharged for misconduct connected with his work.

This reasoning must be tempered, however, by the related principle that if the employer produces evidence which establishes a prima facie case, the burden of going forward with the evidence shifts to the Department of Employment and if it produces no evidence or the evidence it produces is so weak as not to refute the prima facie case of the employer, then the determination should be in favor of the employer.

Turning to the facts herein, the employer had acknowledged that the claimant stated he was leaving for a better job. Subsequent information obtained by the employer established that the first employment obtained by the claimant after leaving the employer herein was, in fact, a substantially poorer job from the viewpoint of wages.

When wages are a consideration in leaving employment, we generally have found that a wage increase of 10 percent or more constitutes good cause, while a lesser wage increase - or a cut in income - does not constitute good cause.

We feel that the employer has established a prima facie case that the claimant left employment without good cause by the introduction of such evidence. It is true that the claimant may have had a firm offer for a better paying construction job and thus had good cause for leaving despite what may thereafter have occurred. Opposed to this view, however, are the equally reasonable assumptions that the first employment obtained upon leaving was the employment that caused leaving; or that the leaving was for the purpose of seeking other work. There is nothing to the contrary.

We conclude then that the employer has established a prima facie case that the claimant left its employ without good cause. There was no evidence offered to overcome the rebuttable case made out by the employer. We hold that the employer's reserve account is relieved of charges under sections 1030 and 1032 of the code.

DECISION

The decision of the referee is reversed. The employer's reserve account is relieved of charges under section 1032 of the code.

Sacramento, California, May 21, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

LOWELL NELSON

JAMES M. SHUMWAY (Not Voting)

JOHN B. WEISS